

Computers, Privacy & the Constitution

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Columbia Law School, Fall 2002

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My office hours are Tuesday and Thursday 2:45 to 3:45 and Wednesday 3-4, in room 642 and by appointment at other times.

On November 14, we discuss [electronic democracy and privacy](#).

On the Radar

Charles Mann, [Homeland Insecurity](#), Atlantic Monthly, September 2002

I. The Technology and the Infrastructure

Encryption in Public Law

[PGP](#): Get it if you don't have it, and please read the Intro-to-Crypto document.

Hal Abelson, et al., [The Risks Of "Key Recovery," "Key Escrow," And "Trusted Third-Party" Encryption](#), 1998

Eben Moglen, [So Much For Savages](#), Comments on Encryption Policy, NYU Law School, November 19, 1998 (revised).

Ronald L. Rivest, [Chaffing and Winnowing: Confidentiality without Encryption](#), April 24, 1998.

David Chaum, [Achieving Electronic Privacy](#), Scientific American, August 1992

Navajo Wins Narrowly: The Slow Death of Encryption Export Regulation

National Research Council, [Cryptography's Role in Securing the Information Society](#), May 1996

[Encryption Export Control Regulations](#), 15 C.F.R. sect. 742.15, as of January 1, 1999

Anti-virus Software and Info-War, New York Times, January 30, 1997

Head of Cyber-Terrorism Panel Says Encryption Rules May Be Needed, New York Times, November 6, 1997

John Markoff, White House May Tighten Data Exports, New York Times, November 24, 1997

Jeri Clausing, Congress Faces List of Internet Issues, New York Times, January 28, 1998.

Jeri Clausing, New Encryption Legislation Billed as a Compromise, New York Times, May 13, 1998.

Jeri Clausing, Encryption Debate Heats Up in Washington, New York Times, June 9, 1998

Carl S. Kaplan, Is Software Like a Can Opener or a Recipe?, New York Times, July 17, 1998

Bernstein v. Dept of State from EFF archive

Jeri Clausing, Lawmakers Renew Encryption Battle, New York Times, February 26, 1999

Jeri Clausing, Senator Ends Opposition to Encryption Software Exports, New York Times, April 2, 1999

Jeri Clausing, Former Allies May Back Different Encryption Bills, New York Times, April 6, 1999

Peter Wayner, Court Calls Encryption Rules Unconstitutional, New York Times, May 7, 1999

Steven Lee Myers, Justice Dept. Proposes Bill to Fight Computer Encryption, New York Times, August 20, 1999

John Markoff, A Mysterious Component Roils Microsoft, New York Times, September 4, 1999

Peter Wayner, Why a Small Software Label Raised Eyebrows, New York Times, September 4, 1999

Sara Robinson, News Analysis: Internet Code-Cracking Project Shows Need for Stronger Locks, New York Times, September 6, 1999

Jeri Clausing, Administration Plans to Loosen Encryption Restrictions, New York Times, September 14, 1999

Jeri Clausing, White House Eases Export Controls on Encryption, New York Times, September 17, 1999

But We're All Still Listening...

Jeri Clausing, New Fight Over Encryption Rules, September 21, 1999

Cyberspace Electronic Security Act of 1999, White House Proposal, September 16, 1999 (published by the Center for Democracy and Technology)

Bruno Giussani, Dutch Law Goes Beyond Enabling Wiretapping To Make It a Requirement, New York Times, April 14, 1998. Please look at the English text of the new Dutch Telecommunications Act linked to the article.

Reuters, Tracking of Swiss Mobile Phone Users Starts Row, InfoBeat, December 28, 1997

Stephen Labaton, New Rules Expand Ability of Police to Monitor Talk on Cell Phones, New York Times, August 28, 1999

Niall McKay, European Parliament Debates Wiretap Proposal, New York Times, May 7, 1999

John Markoff, U.S. Drafting Plan for Computer Monitoring System, New York Times, July 28, 1999

Tim Weiner, Author of Computer Surveillance Plan Tries to Ease Fears, New York Times, August 16, 1999

Declan McCulloch, Cell Phone Crypto Penetrated, Wired News, December 6, 1999

Junger v. Daley, No. 98-4045 (CA6 2000), December 17, 1999

Jeri Clausing, Some Countries Seek Keys to Digital Code-Scramblers, New York Times, April 2, 2000

Anonymity

McIntyre v. Ohio Elections Commission, 514 U.S. 334 (1995)

Buckley v. American Constitutional Law Foundation, 525 U.S. 182 (1999)

John Schwartz, Corporate Case in Ohio Raises Questions on Internet Anonymity, New York Times, October 17, 2000

Anonymous Net Posting Not Protected, New York Times, October 16, 2000

Peter Wayner, Traveling the Web Invisibly, Through a One-Way Mirror, New York Times, November 5, 1997

Philip Shenon, Navy and America Online Settle Case on Gay Privacy, New York Times, June 12, 1998

Jeri Clausing, Hearing on Viruses Becomes Debate on Privacy, New York Times, April 16, 1999

Matt Richtel, AOL Records Sought on Virus, New York Times, April 2, 1999

Evelyn Nieves, Privacy Issues Raised in Syphilis Cases Linked to San Francisco Chat Room, New York Times, August 25, 1999

Alex Berenson, S.E.C. Reaches Settlement in Web-Based 'Pump and Dump' Case, New York Times, March 3, 2000

Privacy Per Se

Jeffrey Rosen, The Eroded Self, New York Times, April 30, 2000

Christine Maxwell and Howard Gutowitz, Data Mining Solutions and the Establishment of a Data Warehouse: Corporate Nirvana for the 21st Century?, First Monday, May 1997

Bill Helling, Web-Site Sensitivity to Privacy Concerns, First Monday, February 1998

Amitai Etzioni, Some Privacy, Please, for E-Mail, New York Times, November 23, 1997

David F. Gallagher, Amazon Tries to Ease Privacy Worries, New York Times, August 30, 1999

Denise Caruso, Digital Commerce: Consumers' Desire for Information Privacy Ignored, New York Times, August 30, 1999

Jeri Clausing, Capital Dispatch: Government Has More Questions for Internet Board, New York Times, November 2, 1999

Sara Robinson, RealNetworks to Stop Collecting User Data, New York Times, November 2, 1999

Sara Robinson, CD Software Is Said to Monitor Users' Listening Habits, New York Times, November 1, 1999

Jeri Clausing, Revised Banking Legislation Raises Concerns About Privacy, New York Times, October 25, 1999

New Rule Will Protect Privacy of Children Online, FTC Press Release, October 20, 1999

Children's Online Privacy Protection Rule, 16 C.F.R. Part 312, Final Rule, October 20, 1999

Jeri Clausing, Revised Banking Legislation Raises Concerns About Privacy, New York Times, October 25, 1999

New Rule Will Protect Privacy of Children Online, FTC Press Release, October 20, 1999

Children's Online Privacy Protection Rule, 16 C.F.R. Part 312, Final Rule, October 20, 1999

Robert O'Harrow, Jr., Unlisted Numbers Not Protected From Marketers, Washington Post, December 19, 1999

Jeri Clausing, U.S. and Europe Reach Tentative Pact on Personal Data, New York Times, February 24, 2000

Reno v. Condon, No. 98-1464, US Supreme Court, January 12, 2000

Bob Tedeschi, E-Commerce Report: Critics Press Legal Assault on Tracking of Web Users, New York Times, February 6, 2000

Stephen Labaton, U.S. Is Said to Seek New Law to Bolster Internet Privacy, New York Times, May 19, 2000

II. Government & Commercial Data Mining-- Big Brother is Just a Sibling

Information and Privacy Commissioner/Ontario, Data Mining: Staking a Claim on Your Privacy, January 1998

Kurt Thearling, An Introduction to Data Mining, 2002

Kurt Thearling, Data Mining and Privacy: A conflict in the making?, DS*, March 1998

Dan Verton, Congressman Says Data Mining Could Have Prevented 9-11, Computerworld, August 26, 2002

III. Direct Surveillance and the Net--Pavement Artists in Cyberspace

Markle Foundation, Protecting America's Freedom in the Information Age, October 2002.

IV. Taboo Enforcement--Terrorism as the New Pornography

Reuters, ZDNet |UK| - News - Story - 'Terror' Web site owner to stand trial, July 9, 2002

Reuters, ZDNet |UK| - News - Story - Scientists protest information lock-down, October 21, 2002

Lucas Mearin, Wall Street aims to thwart criminals with database, Computerworld, June 10, 2002

Noah Shachtman., Israel Blocks Palestinian ISP, Wired News, July 16, 2002

AP, 'Terrorist School' Head Acquitted, Wired News, June 18, 2002

Judith Miller, Report Calls for Plan of Sharing Data to Prevent Terror, New York Times, October 7, 2002

Declan McCullagh, University bans controversial links - Tech News - CNET.com, September 25, 2002

Thomas C. Greene, al-Qaeda Poised to Strike Hard via the Internet, The Register, October 7, 2002

Computer Secrecy Proposals Debated, New York Times, July 24, 2002

University to Study Combating Cyberterror, New York Times, October 8, 2002

CNN.com - Experts slam cybersecurity plan, September 19, 2002

V. State Filtering and Hacktivism--Fighting to Save Unfreedom Everywhere?

Anick Jesdanun, Meeting Warns of Political Robbery, Associated Press, June 21, 2002

Jeroen de Kloet, Digitisation and Its Asian Discontents: The Internet, Politics and Hacking in China and Indonesia, First Monday, September, 2002.

Jennifer S. Lee, Guerilla Warfare, Waged with Code, New York Times, October 10, 2002

John Ruwitch, China Unblocks Foreign Media Web Site, Washington Post, May 16, 2002

The Hacktivist

Dorothy Denning, Activism, Hacktivism, and Cyberterrorism: The Internet as a Tool for Influencing Foreign Policy, Terrorism Research Center, 1999.

VI. Electronic Democracy & the Privacy System

Thomas L. Friedman, Low-Tech Democracy, New York Times, May 1, 2001

Rebecca Fairley Raney, White House Announces Online Initiatives, New York Times, December 17, 1999

BBC News, Fears raised over e-voting, October 17, 2002

Amy Harmon, Vox Populi, Online and Downtown, New York Times, September 26, 2002

Amy Harmon, Vox Populi, Online and Downtown, New York Times, September 26, 2002

Rick Lyman, Got a Cause and a Computer? You Can Fight City Hall, New York Times, October 3, 1998

Kiwi councils to hear about UK e-voting, ComputerworldNew Zealand, June 18, 2001

Jeri Clausing, Beyond Campaign Sites: Politicians Seek Support for Legislation Online, New York Times, April 18, 1999

New Zealand Moves Along E-Gov Preparations, Washington Post, April 30, 2002

VII. New World Information Order? (dbl)

VIII. Privacy & Culture

Conclusion -- Putting it all Apart